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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,616	07/07/2003	Jeffrey Fasnacht	SJ-101US	7479
24314	7590	02/10/2004	EXAMINER	
JANSSON, SHUPE & MUNGER, LTD 245 MAIN STREET RACINE, WI 53403			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER

3643

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/614,616		FASNACHT, JEFFREY	
	Examiner		Art Unit	
	David J Parsley		3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Detailed Action

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to what the non-destructive force quantifies.

Claims 3-32 depend from rejected claim 2 and include all of the limitations of claim 2 thereby rendering these dependent claims indefinite.

Claim 7 recites the limitation "the greater dimension" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to how the polymeric material can be transparent if it has color.

Claim 27 recites the limitation "hook" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,253,446 to Ogle.

Referring to claim 1, Ogle discloses a spinner bait lure - at 11 or 21, with a blade – 18 or 34, wherein the frame – at 12-19a or 23, is made from an integral length of polymeric material – see for example column 4 lines 20-34.

Referring to claim 2, Ogle discloses the polymeric material is selected and the frame is dimensioned such that the frame exhibits flexing resilience, whereby the frame recovers its original configuration after undergoing non-destructive force induced flexing during fishing – see for example columns 3-5.

Referring to claim 3, Ogle discloses the frame has upper and lower arms – see figures 1-2, extending divergently from a frame vertex – proximate 13 or proximate S, whereby a fishing line/leader is attachable with respect to the frame substantially adjacent to the frame vertex – see for example column 3 lines 53-61.

Referring to claim 4, Ogle discloses the upper arm is substantially coplanar with the lower arm – see for example figures 1-2.

Referring to claim 33, Ogle discloses the frame is formed in a molding process – see for example column 3 lines 20-34.

Claims 1-4, 27-30 and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,601,336 to Link.

Referring to claim 1, Link discloses a spinner bait lure – at 2, with a blade – at 36, wherein the frame – at 20,22 or 22,42, is formed of an integral length of polymeric material – see for example column 3 lines 34-62.

Referring to claim 2, Link discloses the polymeric material is selected and the frame is dimensioned such that the frame exhibits flexing resilience, whereby the frame recovers its original configuration after undergoing non-destructive force induced flexing during fishing – see for example columns 3-5.

Referring to claim 3, Link discloses the frame has upper and lower arms – 22 as seen in figure 1, extending divergently from a frame-vertex – at 20, whereby a fishing line/leader is attachable with respect to the frame substantially adjacent to the frame-vertex – see for example at item 10 in figure 1.

Referring to claim 4, Link discloses the upper arm – at 22, is substantially coplanar with the lower arm – at 22 – see for example figure 1.

Referring to claim 27, Link discloses the lure further comprises a jig – at 4 or 28, the arm – at 22, has a distal end, the jig has a jig head and hook – at 6,8 and the jig head is embedded within the distal end – see for example figures 1 and 3.

Referring to claim 28, Link discloses the jig head has a jig proximal end and the arm is substantially tapered adjacent the jig proximal end, whereby stresses upon the arm from deflection at the distal end are diffused throughout the arm – see for example figures 1 and 3.

Referring to claim 29, Link discloses the frame has upper and lower coplanar arms – at 22, extending divergently from a frame vertex – at 20, the jig head being embedded in the lower arm whereby a fishing line/leader is attachable with respect to the frame substantially adjacent to the frame vertex – see for example figures 1 and 3 and column 4.

Referring to claim 30, Link discloses the upper arm – at 22, defines an aperture to attach the blade – at 36, with respect to the frame – see for example figure 1.

Referring to claim 33, Link discloses the frame is formed in a molding process – see for example figures 1 and 3 and columns 3-5.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle or Link as applied to claim 4 above, and further in view of U.S. Patent No. 4,640,040 to Smith.

Referring to claim 5, Ogle and Link do not disclose at least the upper arm has an oblong cross section, thereby imparting a preferential directionality to vibration of the upper arm. Smith

Art Unit: 3643

does disclose the upper arm – at 12, has an oblong cross-section – see for example figures 1-2 and 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle or Link and add the upper arm of oblong cross section of Smith, so as to allow for objects to be movably connected to the frame.

Referring to claim 6, Ogle and Link as modified by Smith further disclose the upper arm – at 12 of Smith, has an upper distal end and the cross section of the upper arm has an area that progressively decreases from the frame vertex toward the upper distal end – see for example figures 1-2 and 6 of Smith.

Referring to claim 7, Ogle and Link as modified by Smith further discloses the greater dimension of the cross section of the upper arm is in the plane of the frame – see for example figures 1-2 and 6 of Smith.

Referring to claim 8, Ogle and Link as modified by Smith further discloses the frame vertex defines a line aperture – proximate 16 of Smith, whereby a fishing line/leader is attachable with respect to the frame at the line aperture – see for example figures 1-2 and 6 and column 2 lines 39-44 of Smith.

Referring to claim 9, Ogle and Link as modified by Smith further disclose the frame is curved at the frame vertex – see for example figures 1-2 of Ogle, figures 1 and 3 of Link and figures 6 of Smith.

Referring to claim 13, Ogle and Link as modified by Smith further disclose the upper arm defines an aperture – at 19a or 33a of Ogle, and proximate 36 of Link, to attach the blade with respect to the frame – see for example figures 1-2 of Ogle and figure 1 of Link.

Claims 10-12, 18-20 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle, Link, Ogle as modified by Smith, Link as modified by Smith, Ogle as modified by Link or Link as modified by Link, as applied to claims 2, 5, 17 and 24 above, and further in view of Link.

Referring to claims 10 and 18, Ogle as modified by Smith and Link, Link as modified by Smith, Ogle as modified by Link and Link as modified by Link further disclose the lure comprises a jig – at 4 or 28 of Link, the lower arm – at 22, has a lower distal end and the jig is attached to the lower arm at the lower distal end – see for example figures 1 and 3 of Link. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle as modified by Smith and add the jig of Link, so as to allow for the device to be more attractive to fish and to allow for the lure components to be securely held together during use.

Referring to claims 11 and 19, Ogle as modified by Smith and Link, Link as modified by Smith, Ogle as modified by Link and Link as modified by Link further disclose the jig has a head – at 4 or 28, and a hook – at 6,8, and the jig head is embedded within the lower distal end – see for example figures 1 and 3 of Link.

Referring to claims 12 and 20, Ogle as modified by Smith and Link, Link as modified by Smith, Ogle as modified by Link and Link as modified by Link further disclose the jig head has jig proximal end and the lower arm is substantially tapered to the jig proximal end whereby stresses upon the arm from deflection at the distal end are diffused throughout the lower arm – see for example figures 1 and 3 of Link.

Referring to claim 25, Ogle as modified by Link and Link disclose the lure further comprises a jig – at 4 or 28 of Link, the upper arm – at 22, defines an aperture to attach the blade

Art Unit: 3643

– at 36, with respect to the frame – see figure 1, the lower arm – at 22, has a lower distal end and the jig is attached to the lower arm at the lower distal end – see for example figure 1 of Link.

Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle or Link and add the jig of Link, so as to allow for the device to be more attractive to fish and to allow for the lure components to be securely held together during use.

Referring to claim 26, Ogle or Link as modified by Link further discloses the jig has a jig head and a hook – at 6,8, the jig head is embedded within the lower distal end – see for example figures 1 and 3 of Link.

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle or Link as applied to claim 2 above and further in view of Link.

Referring to claim 14, Ogle as modified by Link and Link as modified by Link further discloses the polymeric material – at 52 is transparent – see for example column 3 lines 54-61 of Link. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle or Link and add the polymeric material being transparent of Ogle, so as to allow for the fish to not see the polymeric material and to see through the polymeric material.

Referring to claim 15, Ogle and Link as modified by Link further discloses the polymeric material is colored – see for example column 4 lines 20-34 of Ogle and column 3 lines 54-61 of Link.

Referring to claim 16, Ogle and Link as modified by Link do not disclose the polymeric material is polycarbonate. However this would have been an obvious matter of design choice to one of ordinary skill in the art, since the applicant does not state that using polycarbonate is done for any particular reason or solves any particular problem over other types of polymers and it

Art Unit: 3643

appears that the device of Ogle as modified by Link and Link would perform equally as well with the polymeric material being polycarbonate. Further, this is a design criteria determined through experimentation.

Referring to claim 17, Ogle and Link as modified by Link further disclose frame has upper and lower arms – see figures 1-2 of Ogle and – at 22 of Link, extending divergently from a frame vertex – proximate 13 or proximate S of Ogle and – at 20 or 42 of Link, whereby a fishing line/leader is attachable with respect to the frame substantially adjacent to the frame vertex – see for example column 3 lines 53-61 of Ogle and at item – 10 as seen in figure 1 of Link.

Claims 21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle or Link as applied to claim 2 above.

Referring to claim 21, Ogle and Link do not disclose the polymeric material is polycarbonate. However this would have been an obvious matter of design choice to one of ordinary skill in the art, since the applicant does not state that using polycarbonate is done for any particular reason or solves any particular problem over other types of polymers and it appears that the device of Ogle as modified by Link and Link would perform equally as well with the polymeric material being polycarbonate. Further, this is a design criteria determined through experimentation.

Referring to claim 23, Ogle and Link disclose the polymeric material is colored – see for example column 4 lines 20-34 of Ogle and column 3 lines 54-61 of Link.

Referring to claim 24, Ogle and Link disclose the frame has upper and lower coplanar arms – see figures 1-2 of Ogle and – at 22 in figure 1 of Link, extending divergently from a frame vertex – see proximate 13 or S of Ogle and – at 20 of Link, whereby a fishing line/leader

is attachable with respect to the frame substantially adjacent to the frame vertex – see for example figures 1-2 of Ogle and figures 1 and 3 of Link.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle or Link as applied to claim 21 above and further in view of Link.

Referring to claim 22, Ogle as modified by Link and Link as modified by Link further discloses the polymeric material – at 52 is transparent – see for example column 3 lines 54-61 of Link. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle or Link and add the polymeric material being transparent of Ogle, so as to allow for the fish to not see the polymeric material and to see through the polymeric material.

Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle as applied to claim 2 above, and further in view of Link.

Referring to claim 27, Ogle as modified by Link discloses the lure further comprises a jig – at 4 or 28 of Link, the arm has a distal end, the jig has a jig head and a hook – at 6,8, and the jig head is embedded within the distal end – see for example figures 1 and 3 of Link. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle or Link and add the jig of Link, so as to allow for the device to be more attractive to fish and to allow for the lure components to be securely held together during use.

Referring to claim 28, Ogle as modified by Link further discloses the jig head has a jig proximal end and the arm is substantially tapered adjacent the jig proximal end, whereby stresses upon the arm from deflection at the distal end are diffused throughout the arm – see for example figures 1 and 3 of Link.

Referring to claim 29, Ogle as modified by Link further discloses the frame has upper and lower coplanar arms – at 22, extending divergently from a frame vertex – at 20, the jig head being embedded in the lower arm whereby a fishing line/leader is attachable with respect to the frame substantially adjacent to the frame vertex – see for example figures 1 and 3 and column 4 of Link.

Referring to claim 30, Ogle as modified by Link further discloses the upper arm – at 22, defines an aperture to attach the blade – at 36, with respect to the frame – see for example figure 1 of Link.

Referring to claim 31, Ogle as modified by Link further discloses the polymeric material is transparent – see for example column 3 lines 54-61 of Link.

Referring to claim 32, Ogle as modified by Link does not disclose the polymeric material is polycarbonate. However this would have been an obvious matter of design choice to one of ordinary skill in the art, since the applicant does not state that using polycarbonate is done for any particular reason or solves any particular problem over other types of polymers and it appears that the device of Ogle as modified by Link and Link would perform equally as well with the polymeric material being polycarbonate. Further, this is a design criteria determined through experimentation.

Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Link as applied to claim 30 above, and further in view of Link.

Referring to claim 31, Link – at items 22 does not disclose the polymeric material is transparent. Link does disclose the polymeric material is transparent – at 52 as seen in figure 4.

Referring to claim 32, Link does not disclose the polymeric material is transparent. However this would have been an obvious matter of design choice to one of ordinary skill in the art, since the applicant does not state that using polycarbonate is done for any particular reason or solves any particular problem over other types of polymers and it appears that the device of Ogle as modified by Link and Link would perform equally as well with the polymeric material being polycarbonate. Further, this is a design criteria determined through experimentation.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to spinner bait lures in general:

U.S. Pat. No. 1,503,400 to Webb – shows spinner bait

U.S. Pat. No. 2,821,044 to Bateman – shows spinner bait

U.S. Pat. No. 5,172,510 to Lovell, Jr. – shows polycarbonate lure

U.S. Pat. No. 5,274,946 to Fusco – shows polycarbonate lure

U.S. Pat. No. 5,974,723 to Taibi – shows spinner bait

5. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

Art Unit: 3643

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is stylized with a large initial "P" and a long horizontal stroke at the end.

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600